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In re Application of	:	DECISION ON
LANG, Heinz-Jurgen et al	:	
Application No.: 10/596,581	:	
PCT No.: PCT/GB2004/005329	:	PETITION UNDER
Int. Filing Date: 17 December 2004	:	
Priority Date: 17 December 2003	:	37 CFR 1.137(b)
Attorney's Docket No.: 3144/116US	:	
For: BELT TENSION INDICATOR	:	

This decision is in response to applicants' "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed on 25 November 2008.

### **BACKGROUND**

On 17 December 2004, this international application was filed, claiming an earliest priority date of 17 December 2003. The deadline for paying the basic national fee in the United States under 35 U.S.C. 371 was 17 June 2006.

On 16 June 2006, applicant filed electronically via EFS-Web entry into the national stage in the United States, which was accompanied by, basic national fee. No executed declaration or oath was filed at such time.

On 22 March 2007, the United States Patent and Trademark Office erroneously mailed a Notification of Acceptance (PCT/DO/EO/903).

On 10 January 2008, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date, and must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 26 September 2008, the United States Patent and Trademark Office mailed the Notification of Abandonment (PCT/DO/EO/909) since the applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 01/10/2008 within the time period set therein.

On 25 November 2008, applicants filed the instant petition under 37 CFR 1.137(b), which was accompanied by the petition fee, petition, and an executed declaration.

### **DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has satisfied requirements (2), (3), and (4) under 37 CFR 1.137(b) but not requirement (1).

Petitioner has not provided: (1) the proper reply that is a properly executed declaration. The composite declaration is defective since it does not comply with 37 CFR 1.497(a)(3). A Declaration, under 37 CFR 1.497(a)(3) must identify each inventor. See MPEP § 602. In this instance, applicants submitted a composite declaration comprising of two sets of declarations. Each declaration must contain the names all inventors on. In this case, petitioner appears to have provided two sets of executed declaration the first set is complete since it has all four (4) sheets, while the second set only has one sheet, page 4 with the signature David Shaun Carine. The signatures of the inventors may be on separate declarations but each declaration must list all the inventors. Therefore the composite Declaration is defective.

Petitioner provided: (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is not deemed to satisfy items (1), (2), (3), and (4) under 37 CFR 1.137(b).

### **DECISION**

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

A proper response to this decision is a new declaration, which must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to respond will result in the abandonment of the application. Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'R. Bacares', is written over the printed name.

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